

DOCKET FILE COPY ORIGINAL



R. E. Sigmon
Vice President - Regulatory Affairs

201 E. Fourth St., 102 - 320
P. O. Box 2301
Cincinnati, Ohio 45201
Phone: (513) 397-1260

December 6, 1993

RECEIVED

DEC - 6 1993

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Simplification of the Depreciation
Prescription Process

)
)
)
)
)

CC Docket No. 92-296

Dear Mr. Caton:

Enclosed for filing is the original and four copies of Cincinnati Bell Telephone Company's Petition for Clarification or, in the Alternative, Reconsideration.

Please date stamp and return the enclosed duplicate copy of this letter as acknowledgement of its receipt. Questions regarding this filing should be directed to Mrs. Lynda Breen at the above address or by telephone on (513) 397-1265.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. E. Sigmon".

Enclosures

No. of Copies rec'd
List ABCDE

A handwritten number "084" written in cursive script.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC - 6 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Simplification of the
Depreciation Prescription
Process

)
)
)
)
)

CC Docket No. 92-296

PETITION FOR CLARIFICATION OR, IN
THE ALTERNATIVE, RECONSIDERATION

Pursuant to section 1.429 of the Commission's rules,¹ Cincinnati Bell Telephone Company (CBT) hereby seeks clarification of the Commission's *Simplification Order*,² released October 20, 1993 in the above-captioned proceeding. Specifically, CBT asks that the Commission clarify that the same modified procedures adopted for price cap carriers will apply to local exchange carriers (LECs) subject to Optional Incentive Regulation (OIR).³ In the alternative, should the Commission decline to issue a clarification confirming that these

¹ 47 C.F.R. §1.429

² Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Report and Order, (FCC 93-452), released October 20, 1993 (hereinafter, the "*Simplification Order*").

³ Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, CC Docket No. 92-135, Report and Order, (FCC 93-253), released June 11, 1993 (hereinafter, the "*OIR Order*").

modified procedures apply to OIR carriers, then CBT seeks reconsideration of the Commission's *Simplification Order*.

I. Introduction

This proceeding was initiated to reduce unnecessary regulatory burdens and their associated costs by simplifying the depreciation prescription process.⁴ In furtherance of that goal, the *NPRM* sought comment on four specific simplification proposals: (1) the Basic Factor Range Option, (2) the Depreciation Rate Range Option, (3) the Depreciation Schedule Option, and (4) the Price Cap Carrier Option. As a LEC subject to the Commission's depreciation prescription process, CBT has long advocated the need to reduce the unnecessary regulatory burdens associated with that process. In its comments, CBT applauded the goal of this proceeding and addressed the relative merits of each of the Commission's simplification proposals.⁵

In the *Simplification Order*, the Commission decided to adopt a modified version of the Basic Factor Range Option for LECs subject to price cap regulation, and a modified version of the Price Cap Carrier Option for AT&T.⁶ However, much to CBT's surprise and disappointment, the Commission failed to adopt any of the proposed simplification options for rate of return LECs subject to the Commission's depreciation

⁴ Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Notice of Proposed Rulemaking, (FCC 92-537), released December 29, 1992 (hereinafter, the "*NPRM*").

⁵ See, CBT's comments in this proceeding, filed March 10, 1993.

⁶ *Simplification Order*, at paragraph 1.

prescription process. There was no indication in the *NPRM* that the Commission was even considering excluding non-price cap carriers from any of the options other than the Price Cap Carrier Option.⁷ Indeed, in discussing the Basic Factor Range Option, the Commission tentatively concluded that basic factor ranges should be established separately for two groups: the interexchange carriers and the thirty-three LECs for whom the Commission prescribes depreciation rates.⁸ When CBT filed its comments in this proceeding, it therefore limited its response to demonstrating that the Price Cap Carrier Option should also be extended to all LECs. CBT had no reason to believe that any other simplification proposal, if adopted by the Commission, would not be available to all LECs regardless of their regulatory treatment. Indeed, had CBT been given notice of that possibility, it would certainly have addressed that issue in its comments, and would have shown why such an arbitrary distinction is inappropriate and contrary to the goal of this proceeding. CBT submits that to the extent the *Simplification Order* excludes CBT from the LECs to which the simplified procedures apply, the Order is arbitrary and capricious.

The relief requested hereby is in the alternative. The *Simplification Order* does not specifically address whether the proposal adopted for price cap LECs will be available to OIR carriers. CBT has recently elected to be regulated under OIR. Accordingly, CBT requests that the Commission issue an order clarifying that OIR carriers will not be excluded from these modified procedures. In the event the Commission did

⁷ *NPRM*, at paragraph 12.

⁸ *NPRM*, at paragraph 15.

intend to exclude OIR carriers from these modified procedures, then CBT in the alternative requests reconsideration of the *Simplification Order*.

II. CBT's right to due process has been violated.

As discussed above, when CBT filed its comments in this proceeding it assumed that any simplification proposal adopted by the Commission would be available to all LECs regardless of their regulatory treatment.⁹ The *NPRM* did not seek comment on this issue and, to CBT's knowledge, none of the comments filed in this proceeding specifically address the matter. Thus, the Commission's findings at paragraph 22 of the *Simplification Order* are not supported by the record in this proceeding. Moreover, the *NPRM*'s failure to provide reasonable notice and opportunity to comment on this vital issue prior to the Commission's adoption of the *Simplification Order* violated CBT's right to due process.

III. The *Simplification Order* is contrary to the Commission's goals.

The Commission states that its hope is to achieve three goals by adopting the *Simplification Order*: (1) simplification of the depreciation prescription process, (2) administrative savings, and (3) flexibility.¹⁰ CBT submits that the *Simplification Order* will achieve none of these goals. Indeed, to the extent certain non-price cap LECs are excluded

⁹ Based on the comments filed in this proceeding, it appears that CBT was not alone in that assumption. For example, see State Consumer Advocate's comments, filed March 10, 1993, at p. 14; AT&T's comments, filed March 10, 1993, at p. 10; attachment to Bell Atlantic's ex parte dated September 9, 1993; and Southwestern Bell's comments, filed March 10, 1993, at pp. 9-10.

¹⁰ *Simplification Order*, at paragraph 3.

from the simplified procedures adopted for price cap LECs,¹¹ the *Simplification Order* actually makes the depreciation prescription process more complicated. Now, instead of having one overly burdensome, out-dated procedure which applies to all affected carriers, the *Simplification Order* effectively creates three separate procedures with varying degrees of flexibility, based on their regulatory status.¹² CBT submits that the goals espoused above should apply to all LECs regardless of how they are regulated. Instead of focusing on principles of capital recovery, the *Simplification Order* puts far too much emphasis on arbitrary distinctions among carriers. In fact, all carriers have access to and employ similar technologies in provisioning service, and utilize the same FCC depreciation guidelines and methodologies (e.g., straight line, ELG, remaining life) in arriving at acceptable depreciation rates. In light of these similarities, the Commission's decision to exclude certain LECs from the procedures adopted in the *Simplification Order* is unreasonable, and clearly contrary to its stated goal of simplifying the depreciation prescription process.

IV. The excluded LECs will be saddled with an even greater burden.

The unnecessary continuation of the current depreciation prescription process for two non-price cap LECs will significantly increase CBT's regulatory burdens. Under the current process, CBT jointly funds, with other LECs, a costly capital recovery system which

¹¹ At the time the *Simplification Order* was adopted, there were only two non-price cap LECs, CBT and Citizens Utilities Co., which were both under rate of return regulation. As mentioned above CBT has since elected to convert to OIR.

¹² The *Simplification Order* creates one procedure for AT&T, another for price cap LECs, and a third for rate of return LECs. As to this third group only, no flexibility was adopted.

maintains capital recovery data and produces certain Commission-required exhibits. To the extent price cap LECs are relieved of all or part of their filing responsibilities, CBT will be saddled with the additional burden of creating its own unique system. CBT does not have the financial resources to be the primary funding source for this or any other system. Likewise, in the past the Commission has relied on one of the larger Tier 1 LECs to produce the annual FCC Depreciation Study Guide used to establish requirements for represcription filings. If this responsibility were passed to CBT, because of its extensive filing requirements CBT would not have the additional staff necessary to produce such a study guide.

It is apparent that the Commission has vastly underestimated the burden that will continue to be placed on CBT if it is required to follow existing depreciation prescription procedures. In that regard, the Commission states that, on average, a typical depreciation rate study contains about 600 pages of material, with approximately 20-25 pages of analyses per account.¹³ However, CBT's recently filed 1994 study contains a total of 1,188 pages, with an average of 39 pages of analyses per account. The burdens mentioned above are unreasonable, especially when there is no justification for treating CBT in a different manner than other LECs.

¹³ *Simplification Order*, at paragraph 13.

V. **Simplifying the depreciation prescription process for CBT will not necessarily result in increased prices to consumers.**

The only explanation given by the Commission for its decision to make the basic factor range option unavailable to rate of return LECs is set forth in paragraph 22 of the *Simplification Order* wherein the Commission states:

The reforms we adopt today for price cap LECs are not appropriate for rate of return/rate base LECs at this time. Because rate of return/rate base regulation necessarily will result in increased prices to consumers with increased depreciation rates, we conclude that adoption of any of the simplification options for rate of return LECs would not serve the public interest. Moreover, these LECs are not in such a competitive posture that there are sufficient disincentives to dissuade them from passing on to ratepayers all increased depreciation expense which may be unreasonable. We are ever cognizant of our mandate to ensure that ratepayers are charged "just and reasonable" rates.

This paragraph implies that the basic factor range option adopted by the Commission would give rate of return LECs complete freedom to increase their depreciation rates. This is of course not the case. The Commission would in any event retain final authority to prescribe depreciation rates that ensure just and reasonable rates for consumers. Furthermore, contrary to the Commission's finding in paragraph 22, there are several disincentives to dissuade CBT from passing unreasonable depreciation expenses on to ratepayers. Emerging competition and customer expectations will provide ample disincentives in that regard, and necessitate continued cost-cutting and rate containment measures on the part of CBT. For example, CBT is under constant pressure from large interexchange carriers (e.g., AT&T, MCI and Sprint) to keep costs as low as possible and to pass on any cost savings by way of reduced

rates. In short, CBT would have neither the incentive, nor for that matter the ability to implement unreasonable increases in its depreciation expense.

VI. The similarities between CBT and the price cap LECs make it appropriate for the Commission to treat CBT like a price cap LEC for purposes of prescribing depreciation rates.

CBT has operating characteristics which are very similar to other (price cap) LECs. It is likely that, because there will be ranges in place for price cap LECs, CBT's proposed factors will be compared to those established ranges. As a result, CBT will likely end up with basic factors which, for the most part, are within the ranges established for price cap LECs. An analysis of current depreciation parameters for the LEC industry demonstrates that the vast majority of CBT's current depreciation parameters fall within one standard deviation of the arithmetic mean¹⁴ of those prescribed for the industry.¹⁵ The Commission has also indicated that use of "industry-wide" data (which presumably includes CBT) should be considered in establishing its ranges.¹⁶ CBT's depreciation factors are likely to end up within established ranges whether or not the simplified depreciation procedure is

¹⁴ An analysis conducted by CBT indicates that 87% of its prescribed projection lives and 74% of its prescribed future net salvage values fall within one standard deviation of the arithmetic mean of companies prescribed during 1991, 1992 and 1993.

¹⁵ *Simplification Order*, at paragraph 62.

¹⁶ The Commission has set forth specific data that should be considered when establishing the projection life and future net salvage ranges. These data include a range of +/- one standard deviation around an industry-wide mean of basic factors underlying currently prescribed rates. Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Order Inviting Comments (FCC 93-492), released November 12, 1993, at paragraph 7.

available to CBT. Moreover, any proposal by CBT to set depreciation factors outside the ranges established for price cap LECs would most likely be met with intense scrutiny. Although the results obtained through either process would likely be the same, the *Simplification Order* would require CBT to submit detailed studies to justify its proposed depreciation rates.

As discussed above, CBT has recently elected to be regulated under the Commission's OIR plan. As an OIR carrier, there will be even greater similarities between CBT and the price cap LECs. OIR is an incentive based regulatory model which, on a continuum of regulatory models, is very close to price cap regulation.¹⁷ Exogenous cost treatment is the same for OIR carriers as it is for price cap carriers.¹⁸ As with price cap regulation, there is no incentive under OIR to arbitrarily increase depreciation solely to increase rates since depreciation expense is an endogenous cost. As with price cap

¹⁷ Because of CBT's small size, it is less possible for CBT to consolidate and achieve the productivity improvements that the Regional Bell Operating Companies (RBOCs) are capable of achieving. As a result, the price cap productivity factor would be problematic for CBT. The Commission recognized the fact that price cap regulation is not appropriate for all LECs, and initiated the OIR proceeding to arrive at a more suitable alternative for LECs like CBT. Electing to be regulated under the OIR plan should not disqualify a LEC from participating in the simplified procedure adopted for price cap LECs. To do so would penalize CBT for choosing OIR rather than price cap regulation.

¹⁸ At paragraph 51 of the *OIR Order*, the Commission states: "We continue to believe that exogenous costs, those listed for price caps in Section 61.45(d) of the Commission's Rules, should be used to adjust the historical costs used in the optional incentive plan."

regulation, OIR discontinues the direct relationship that previously existed between depreciation expenses and prices to consumers.¹⁹

VII. Conclusion

For all of the foregoing reasons, CBT respectfully seeks clarification of the *Simplification Order*. The Commission should clarify that the simplified procedures adopted for price cap LECs will apply to OIR carriers as well. Should the Commission decline to issue such a clarification, however, CBT respectfully seeks reconsideration of the *Simplification Order* to the extent it excludes certain LECs from the simplified procedures adopted for price cap LECs. Any simplification proposal adopted by the Commission should be made available to all LECs regardless of their regulatory classification.

Respectfully submitted
FROST & JACOBS

By 

Thomas E. Taylor

2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
(513) 651-6800


Attorneys for Cincinnati Bell
Telephone Company

Dated: December 6, 1993
0063273.01

¹⁹ At paragraph 7 of the *Simplification Order*, the Commission cites the direct relationship between depreciation expenses and rates to consumers as well as the general competitive position of the LECs as the reasons for not adopting any of the proposed simplification options for the two rate of return LECs.

Certificate of Service

I, Lynda M. Breen, do here by certify on this 6th day of December, 1993, that I have caused a copy of the foregoing Cincinnati Bell Telephone Company's Petition for Clarification or, in the Alternative, Reconsideration, to be mailed, via first class United States Mail, postage prepaid, to the persons on the attached Service List.


Lynda M. Breen

Mr. William F. Caton, Acting Sec'y. *
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

International Transcription Service *
1919 M Street, N.W., Room 246
Washington, D.C. 20036

Fatina Franklin *
Accounting & Audits Division
2000 L Street, N.W., Suite 257
Washington, D.C. 20554

Judith Nitsche *
Tariff Review Division
1919 M Street, N.W., Room 518
Washington, D.C. 20554

via Hand Delivery *